

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 04-CV-12249-DPW

|                                      |   |                           |
|--------------------------------------|---|---------------------------|
| HARVARD REAL ESTATE-ALLSTON, INC.,   | ) | REVISED                   |
| Plaintiff,                           | ) | ASSENTED TO MOTION FOR    |
|                                      | ) | LEAVE TO FILE REPLY BRIEF |
| v.                                   | ) | BY JANUARY 18, 2005       |
|                                      | ) | RE: HARVARD'S MOTION TO   |
| KMART CORPORATION, KMART STORE 9424, | ) | DISMISS COUNTERCLAIMS     |
| Defendant.                           | ) |                           |
|                                      | ) |                           |

The Plaintiff, Harvard Real Estate-Allston, Inc. ("Harvard"), by its attorneys, pursuant to Local Rule 7.1(B)(3), with the assent of Defendant Kmart Corporation, Kmart Store 9424 ("Kmart"), hereby moves for leave to file a Reply Brief by Tuesday, January 18, 2005 in reply to Kmart's Opposition to Harvard's Motion to Dismiss Counterclaims. As reasons therefor, the Plaintiff states as follows:

1. Harvard's pending Motion to Dismiss Counterclaims raises crucial issues concerning whether this Court has subject matter jurisdiction of Kmart's counterclaims in this summary process eviction case which the Defendant has removed from the state court. Before this case proceeds on the merits, it is vitally important that the jurisdictional issues be fully briefed for the Court's review.

2. Kmart has assented to this motion, as reflected in stipulations filed with the Court in which Harvard has granted Kmart successive extensions to file its Opposition. (See Stipulations docket as entries numbered 14, 15 and 16, Paragraph 2, copies of which are attached hereto).

3. Harvard is filing this motion without delay immediately upon having received Kmart's Opposition to Harvard's Motion to Dismiss Counterclaims.

4. In its Opposition brief, Kmart has submitted voluminous new material which purports to establish subject matter jurisdiction of its Counterclaims. Harvard would be unduly prejudiced if it does not have the full opportunity to reply to the new material submitted by Kmart.

5. Allowing Harvard to file a Reply Brief would materially assist the Court in evaluating important issues concerning this Court's subject matter jurisdiction, or lack thereof. Moreover, Kmart has assented to this motion and there is no prejudice to Kmart by allowing the motion.

6. Accordingly, Harvard requests a period of up to and including Monday, January 17, 2005 in which to file a Reply Brief with respect to its Motion to Dismiss Counterclaims. This is a reasonable period of time given that attorneys and staff will be out of the office on vacation during the upcoming holidays.

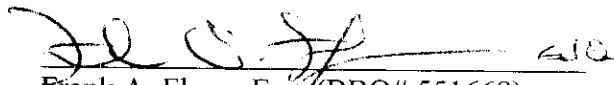
7. Harvard and Kmart have also agreed that if the Court allows this assented to motion for Harvard to file a Reply Brief, then Harvard will assent to a commensurate period for Kmart to file a Surreply, up to and including February 22, 2005.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court grant it a period of up to and including Monday, January 17, 2005 to file a Reply Brief in reply to the Defendant's Opposition to the Plaintiff's Motion to Dismiss Counterclaims.

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)**

On December 17, 2004, and again on December 21, 2004, I, Frank A. Flynn, counsel for the Plaintiff, discussed and reviewed the foregoing Motion by telephone conference with Kathleen A. Rahbany, counsel for the Defendant. Attorney Rahbany authorized me to sign her name in assent to this Motion.

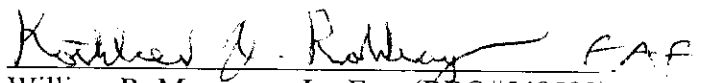
Respectfully submitted,  
Plaintiff,  
Harvard Real Estate Allston-Inc.  
By its attorneys,



Frank A. Flynn, Esq. (BBO# 551668)  
Randolph C. English, Esq. (BBO# 628647)  
Downing & Flynn  
85 Devonshire Street, Suite 1000  
Boston, MA 02109  
(617) 720-3535

ASSENTED TO:

The Defendant,  
Kmart Corporation, Kmart Store 9424  
By its attorneys,



William R. Moorman, Jr., Esq. (BBO#548593)  
Kathleen A. Rahbany, Esq. (BBO# 654322)  
Craig and Macauley Professional Corporation  
Federal Reserve Plaza  
600 Atlantic Avenue  
(Boston, MA 02210  
(617) 367-9500

DATED: December 21, 2004

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 04-CV-12249-DPW

|   |   |  |
|---|---|--|
| <u>HARVARD REAL ESTATE-ALLSTON, INC.,</u>   | ) |  |
| Plaintiff,                                  | ) |  |
|   | ) |  |
| v.  | ) |  |
|   | ) |  |
| <u>KMART CORPORATION, KMART STORE 9424,</u> | ) |  |
| Defendant.                                  | ) |  |
|   | ) |  |

STIPULATION RE: KMART  
EXTENSION FOR FILING  
RESPONSES TO HARVARD'S  
MOTION TO REMAND AND  
MOTION TO DISMISS  
COUNTERCLAIMS

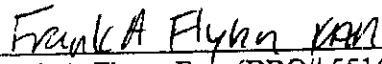
The Plaintiff, Harvard Real Estate-Allston, Inc. ("Harvard"), and the Defendant, Kmart Corporation, Kmart Store 9424 ("Kmart"), by their attorneys, hereby stipulate and agree to the following:

1. Kmart shall have until and including December 14, 2004 to file a Response to Harvard's Motion to Remand and a Response to Harvard's Motion to Dismiss Counterclaims;
2. Kmart shall assent to Harvard's Motion for Leave to File Reply Brief to Kmart's Response to Harvard's Motion to Remand and Kmart's Response to Harvard's Motion to Dismiss Counterclaims;
3. If the Court allows Harvard's Motion for Leave to File Reply Brief to Kmart's


Responses pursuant to Paragraph 2, Harvard will assent to Kmart's Motion for Leave to File

Surreply to Harvard's Reply Brief.

Respectfully submitted,  
Plaintiff,  
Harvard Real Estate Allston-Inc.  
By its attorneys,

  
Frank A. Flynn, Esq. (BBO# 551668)  
Randolph C. English, Esq. (BBO# 628647)  
Downing & Flynn  
85 Devonshire Street, Suite 1000  
Boston, MA 02109  
(617) 720-3535

By Telephonic Assent:  
Defendant,  
Kmart Corporation, Kmart Store 9424  
By its attorneys,

  
William R. Moorman, Jr., Esq. (BBO# 548593)  
Kathleen A. Rahbany, Esq. (BBO# 654322)  
Craig and Macauley Professional Corporation  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, MA 02210  
(617) 367-9500

DATED: December 13, 2004

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 04-CV-12249-DPW

|                                      |   |                        |
|--------------------------------------|---|------------------------|
| HARVARD REAL ESTATE-ALLSTON, INC.,   | ) | STIPULATION RE: KMART  |
| Plaintiff,                           | ) | EXTENSION FOR FILING   |
|                                      | ) | RESPONSES TO HARVARD'S |
| v.                                   | ) | MOTION TO REMAND AND   |
|                                      | ) | MOTION TO DISMISS      |
| KMART CORPORATION, KMART STORE 9424, | ) | COUNTERCLAIMS          |
| Defendant.                           | ) |                        |

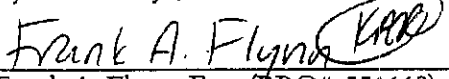
The Plaintiff, Harvard Real Estate-Allston, Inc. ("Harvard"), and the Defendant, Kmart Corporation, Kmart Store 9424 ("Kmart"), by their attorneys, hereby stipulate and agree to the following:

1. Kmart shall have until and including December 15, 2004 to file a Response to Harvard's Motion to Remand and a Response to Harvard's Motion to Dismiss Counterclaims;
2. Kmart shall assent to Harvard's Motion for Leave to File Reply Brief to Kmart's Response to Harvard's Motion to Remand and Kmart's Response to Harvard's Motion to Dismiss Counterclaims;
3. If the Court allows Harvard's Motion for Leave to File Reply Brief to Kmart's

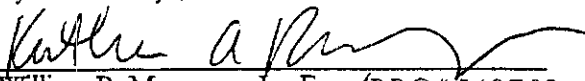
Responses pursuant to Paragraph 2, Harvard will assent to Kmart's Motion for Leave to File

Surreply to Harvard's Reply Brief.

Respectfully submitted,  
Plaintiff,  
Harvard Real Estate Allston-Inc.  
By its attorneys,

  
\_\_\_\_\_  
Frank A. Flynn, Esc. (BBO# 551668)  
Randolph C. English, Esq. (BBO# 628647)  
Downing & Flynn  
85 Devonshire Street, Suite 1000  
Boston, MA 02109  
(617) 720-3535

By Telephonic Assent:  
Defendant,  
Kmart Corporation, Kmart Store 9424  
By its attorneys,

  
\_\_\_\_\_  
William R. Moorman, Jr., Esq. (BBO# 548593)  
Kathleen A. Rahbany, Esq. (BBO# 654322)  
Craig and Macauley Professional Corporation  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, MA 02210  
(617) 367-9500

DATED: December 14, 2004

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

|                                |                                  |
|--------------------------------|----------------------------------|
| HARVARD REAL ESTATE-ALLSTON, ) |                                  |
| INC., )                        |                                  |
| Plaintiff, )                   |                                  |
| v. )                           | Civil Action No. 04-CV-12249-DPW |
| KMART CORPORATION, )           |                                  |
| INC., )                        |                                  |
| Defendant )                    |                                  |

**STIPULATION RE : KMART EXTENSION FOR FILING  
RESPONSES TO HARVARD'S MOTION TO REMAND AND  
MOTION TO DISMISS COUNTERCLAIMS**

The Plaintiff, Harvard Real Estate-Allston, Inc. ("Harvard"), and the Defendant, Kmart Corporation, Kmart Store 9424 ("Kmart"), by their attorneys, hereby stipulate and agree to the following:

1. Kmart shall have until and including December 16, 2004 to file a Response to Harvard's Motion to Remand and a Response to Harvard's Motion to Dismiss Counterclaims;
2. Kmart shall assent to Harvard's Motion for Leave to File Reply Brief to Kmart's Response to Harvard's Motion to Remand and Kmart's Response to Harvard's Motion to Dismiss Counterclaims;



3. If the Court allows Harvard's Motion for Leave to File Reply Brief to Kmart's Responses pursuant to Paragraph 2, Harvard will assent to Kmart's Motion for Leave to File Surreply to Harvard's Reply Brief.

Respectfully submitted,

HARVARD REAL ESTATE ALLSTON-INC.  
By its attorneys,

Frank A. Flynn / WRM  
Frank A. Flynn (BB#551668)  
Randolph C. English (BBO#628647)  
Downing & Flynn  
85 Devonshire Street, Suite 1000  
Boston, MA 02109  
(617) 720-3535

Respectfully submitted,

KMART CORPORATION,  
By its attorneys,

/s/William R. Moorman, Jr.  
William R. Moorman, Jr., (BBO#548593)  
Kathleen A. Rahbany (BBO#654322)  
Joseph J. Koltun (BBO# 641117)  
Craig and Macauley  
Professional Corporation  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, MA 02210  
(617) 367-9500

Dated: December 15, 2004